

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RYAN GREKO, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

DIESEL U.S.A., INC,

Defendant.

Case No.: C-10-02576-YGR

**ORDER REGARDING PROPOSED
CLASS NOTICE**

Prior to reassignment to this Court, the parties filed a Joint Status Report Re: Proposed Class Notice. Dkt. No. 109. In this report, the parties informed the Court of a substantive disagreement regarding whether class members may speak to Defendant or its counsel before opting out of the class. Plaintiff proposed that class members be advised that they may do so only if they opt out. Defendant believed such restrictions were unwarranted and wrongly interfered with the employer-employee relationship.

In the parties' Joint Case Management Conference Statement filed on January 27, 2012, the parties confirmed that the same disagreement still exists—namely, they “disagree as to whether or not class members may be permitted to speak with [Defendant] or its counsel regarding this litigation, prior to opting out of the class, and vice-versa.” Dkt. No. 119. Defendant contends it should be free to talk to its employees and former employees (“Employees”) about the lawsuit and upcoming trial, regardless of whether or not they have excluded themselves from the class, and that the Employees should have the right to make up their own minds about whether to participate as witnesses at trial on behalf of Defendant. Plaintiff’s position is that all class members are currently represented by

Plaintiff's counsel, pursuant to the October 26, 2011 class certification order. As such, it is inappropriate for Defendant or its counsel to speak with class members prior to any decision that Employees may make regarding opting out of the class.

The Court holds that because the class has been certified, Plaintiff's counsel represents all class members until they choose to opt out. *See Harris v. Vector Marketing Corp.*, 716 F. Supp. 2d 835, 847 (N.D. Cal. 2010) providing:


Although not all courts are in agreement, most courts have held that, "[o]nce a class has been certified, the rules governing communications [with class members] apply as though each class member is a client of the class counsel." Manual of Complex Litig. § 21.33, at 300 (4th ed. 2004). *See, e.g., Kleiner v. First Nat'l Bank of Atlanta*, 751 F.2d 1193, 1207 n. 28 (11th Cir.1985) (stating that, "[a]t a minimum, class counsel represents all class members as soon as a class is certified"); *Erhardt v. Prudential Group*, 629 F.2d 843, 845 (2d Cir.1980) (stating that, "[o]nce a class has been certified, the rules governing communications apply as though each class member is a client of the class counsel"); *Parks v. Eastwood Ins. Servs.*, 235 F.Supp.2d 1082, 1083 (C.D.Cal.2002) (stating that, "[i]n a class action certified under Rule 23 ... absent class members are considered represented by class counsel unless they choose to 'opt out' "). Including contact information for defense counsel in the class notice risks violation of ethical rules and inadvertent inquiries, thus engendering needless confusion. *See generally Stuart v. RadioShack Corp.*, No. C-07-4499 EMC (Docket No. 108).

Defendant's counsel shall not communicate directly or indirectly with parties represented by counsel regarding this action, unless Plaintiff's counsel consents. Cal. Rule Prof. Conduct 2-100; ABA Model Rule 4.2. Defendant is free to communicate with its employees in the ordinary course of business regarding non-litigation matters.

For the foregoing reasons, the parties shall conform their Notice of Pendency of Class Action to the above. The parties shall submit a revised Notice to the Court within fifteen (15) days of the date of this Order.

IT IS SO ORDERED.

Dated: February 15, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE